

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

STEVEN F. BREWSTER,

Plaintiff,

v.

AMERICAN MENSA LTD., et al.,

Defendants.

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Civil Action No. 4:18-cv-00536-O

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. *See* FCR, ECF No. 21. Plaintiff timely filed objections. Pl.’s Obj., ECF No. 24. The Court conducts a *de novo* review of those portions of the proposed findings and recommendation to which Plaintiff objected.

The Magistrate Judge recommended the case be dismissed for lack of subject matter jurisdiction. *See* ECF No. 21. In his objection, Plaintiff asserts that federal jurisdiction exists because Defendant American Mensa Ltd. cannot exist as a “501(c)(3) nonprofit without the involvement of the IRS, a state actor.” Pl.’s Obj. 1, ECF No. 24. But, Plaintiff’s argument fails because Plaintiff’s allegations and claims in this case are against private rather than state actors and are not predicated on any state action. *See Priester v. Lowndes County*, 354 F.3d 414, 420 (5th Cir. 2004). Additionally, Plaintiff has failed to demonstrate that diversity of citizenship exists. 28 U.S.C. § 1332. In his objections, Plaintiff argues that diversity exists because American Mensa’s “personhood” is in Texas and that of the Plaintiff is in Kentucky. Pl.’s Obj. 1, ECF No. 24. But,

Plaintiff has failed to demonstrate that complete diversity exists. *Stafford v. Mobil Oil Corp.*, 945 F.2d 803, 804 (5th Cir. 1991). As the Magistrate Judge noted, Plaintiff failed to assert complete diversity in the Complaint and abandoned diversity as a basis for jurisdiction in his Response. FCR 5, ECF No. 21. Additionally, Defendants demonstrate that there is a lack of complete diversity because the Bluegrass and Kentukiana Mensa chapters draw members from Kentucky, which is the same state as Plaintiff. Defs.' Mot. Dismiss 3, ECF No. 12. Thus, the Court finds no diversity of citizenship or federal question jurisdiction and Plaintiff's objections are **OVERRULED**.

For the foregoing reasons, the Court finds that the Findings, Conclusions, and Recommendation in this case (ECF No. 21) should be and is hereby **ACCEPTED**. Accordingly, the Court **GRANTS** Defendants' 12(b)(1) and 12(b)(6) Motion (ECF No. 12), **DISMISSES** this action without prejudice, and **DENIES** Plaintiff's Motions for Judgment on the Pleadings (ECF Nos. 17 and 18) as **MOOT**.

SO ORDERED on this **26th** day of **December, 2018**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE